

APPENDIX D
Clean Lakes (EPA) Legislation

WAPPINGERS LAKE
WAPPINGERS FALLS, NEW YORK
APRIL 1993

comments is appropriate. Comments with respect to cost limits for a given location should be sent to the address indicated above.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969, has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, the per unit cost schedules setting Prototype Cost Limits for Low-Income Housing are amended

as follows:

At 24 CFR Part 841, Appendix A, Prototype Cost Limits for Low-Income Public Housing, revise the per unit cost schedule for elevator dwellings, as shown on the prototype per unit cost schedule, Region X, Kennewick, Washington.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Sec. 8(b) U.S. Housing Act of 1937, 42 U.S.C. 1437(d))

Issued at Washington, D.C. on January 20, 1980.

Lawrence D. Simons,
Assistant Secretary for Housing-Federal
Housing Commissioner.

Region X

	Bedrooms					
	0	1	2	3	4	5
Kennewick, Wash:						
Detached and semidetached						
Row dwellings						
Walkup						
Elevator structure	27,800	30,600	38,850			

[FR Doc. 80-3663 Filed 2-4-80; 8:48 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Panama Canal Commission Personnel Matters

AGENCY: Secretary of the Army.

ACTION: Final rule.

SUMMARY: The Panama Canal Act of 1979, Pub. L. No. 96-70, 93 Stat. 452, creates two statutory positions in the Panama Canal Commission: A Chief Engineer and an Ombudsman. This rule excludes those positions and their principal assistants from the Merit System established pursuant to section 10 of an Act of July 25, 1958, Pub. L. No. 85-550, 72 Stat. 408 and continued under Title 2, Canal Zone Code, Section 149, 78A Stat. 18, and section 1214 of the Panama Canal Act of 1979. The rule will also exclude the positions from various other provisions of the employment system applicable to employment in Federal agencies in the Republic of Panama. Because this rule pertains to personnel matters of the Panama Canal Commission it is unnecessary to issue a notice of proposed rulemaking under Title 5, U.S.C., Section 553.

EFFECTIVE DATE: January 13, 1980.

ADDRESS: Department of the Army, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Colonel Michael Rhode, Jr., Office of the Assistant Secretary of the Army (CW), Washington, D.C. 20310; telephone (202) 695-1370.

Adoption of Amendment

Accordingly, effective January 13, 1980, 35-CFR 253.8(b) is amended by adding a new subparagraph (14) to read as follows:

§ 253.8 Exclusions.

(b) . . .

(14) The positions in the Panama Canal Commission of Ombudsman, Chief Engineer, Assistant to the Ombudsman, and Deputy Chief Engineer.

(Panama Canal Act of 1979, sec. 1212, 93 Stat. 452, 465; 35 CFR 251.2(u)(1))

Clifford L. Alexander, Jr.,
Secretary of the Army.

[FR Doc. 80-3661 Filed 2-4-80; 8:45 am]

BILLING CODE 3640-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

(FRL 1388-4)

Cooperative Agreements for Protecting and Restoring Publicly Owned Freshwater Lakes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes policies and procedures by which States may enter into cooperative agreements to assist in carrying out approved methods and procedures for restoring publicly owned freshwater lakes, and protecting them against degradation, as authorized by section 314 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). This regulation was proposed on January 29, 1979 (44 FR 5685) for a sixty-day public comment period. EPA received 48 letters of comment which we have considered in developing this regulation.

EFFECTIVE DATE: This regulation governs only clean lakes cooperative agreements which are awarded after February 5, 1980. Cooperative agreements and grants that are awarded before February 5, 1980, will continue according to their original terms subject to the regulations under which the funds were awarded. Clean lakes applications received before February 5, 1980 will be processed according to past procedures.

ADDRESSES: Comments submitted on these regulations may be inspected at the Public Information Reference Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, between 8 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph A. Krivak, Criteria and Standards Division (WH-585), Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 755-0100.

SUPPLEMENTARY INFORMATION: This regulation contains the policies and procedures governing the provision of Federal financial assistance to States for the protection and restoration of publicly owned freshwater lakes as authorized by the Clean Water Act (33 U.S.C. 1251 *et seq.*) Section 314. The program is called the clean lakes program.

The Federal Grant and Cooperative Agreement Act requires all Federal Agencies to classify each assistance transaction as either a grant or a cooperative agreement. EPA will award grants when little Federal involvement

in the project is expected, and cooperative agreements when significant Federal involvement is anticipated. We expect significant EPA involvement in all Clean Lakes projects and have designated cooperative agreements as the appropriate award instrument.

Section 314 requires each State to prepare and submit a report to EPA including: (1) An identification and classification of all publicly owned freshwater lakes in that State according to eutrophic condition; (2) procedures, processes, and methods (including land use requirements) to control sources of pollution of these lakes; and (3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of these lakes. Section 314 also provides financial assistance to States to implement lake restoration and protection methods and procedures approved by the Administrator.

Pub. L. 95-217, amended section 314(b) of the Clean Water Act by adding the following: "The Administrator shall provide financial assistance to States to prepare the identification and classification surveys required in subsection (a)(1) of this section." On July 10, 1978, EPA published a notice of availability in the Federal Register for States to identify and classify their publicly owned freshwater lakes according to trophic condition, establish priority rankings for lakes in need of restoration; and conduct diagnostic feasibility studies to determine methods and procedures to protect or restore the quality of those lakes (43 FR 29617). Financial assistance of up to \$100,000 is available to each State for this lake classification survey. No award can exceed 70 percent of the eligible cost of a proposed project.

EPA carefully evaluated the performance of the clean lakes program during 1977 to determine how it might be improved. Based on this evaluation, we developed the revised procedures contained in this regulation. We published the proposed section 314 regulation in the Federal Register (44 FR 85) on January 29, 1979, for a sixty-day public comment period. In addition, we sent approximately 1000 copies of the proposed rule to the people identified on a current mailing list of the Environmental Resources Unit of the University of Wisconsin—Extension, to State agencies, environmental interest groups and specific requestors. The public comment period closed on February 10, 1979, and EPA has received 48 comment letters.

The following discussion responds to the comments received on the proposed regulation and is arranged in the order

of the sections of the regulation. Changes made in the final form of the regulation in response to public comment are discussed. Our responses to significant comments that did not lead to changes are also discussed.

Definitions

Freshwater lake

Some commenters believed that the definition of freshwater lake (§ 35.1605-2) should not include a limiting value for total dissolved solids (TDS). Section 314 allows funding only for publicly owned "freshwater" lakes. Since TDS is found in various scientific texts as a measure to distinguish freshwater from brackish water and saltwater, we believe it is relevant. We have selected a value of 1 percent TDS which is ten times the value used on page 300 in the *Water Encyclopedia*, Water Information Center, Inc., Port Washington, New York, 1970. We used the high value so that freshwater lakes that have received a high TDS loading a result of irrigation return flows and other land management practices (primarily in the far West) can be eligible.

Publicly owned freshwater lake

Several comments concerned the definition of "publicly owned freshwater lake" (§ 35.1605-3). We proposed that a publicly owned freshwater lake is, "[a] freshwater lake that offers public access to the lake through publicly owned contiguous lands so that any member of the public may have the same or equivalent opportunity to enjoy privileges and benefits of the lake as any other member of the public or as any resident around the lake." We understand that a lakeshore property owner stands to receive greater benefit from a lake than a day visitor. We have omitted reference to the lakeside resident, but we are still concerned about the potential for the clean lakes program providing benefits to the lakeshore property owner rather than the general public. However, since projects demonstrating the greatest public benefits will receive the highest priority under the review criteria in § 35.1610-1, we do not expect problems.

Other commenters questioned the appropriateness of requiring publicly owned contiguous land as the public access point. We believe the requirement is necessary to ensure that the public maintains unrestricted use of a lake after it is improved. Even so, in some cases where publicly owned contiguous land is not available, the lake may have substantial public use and benefit. One State indicated that by State statute all lakes greater than 10

acres surface area are in the public domain even if the shoreline is totally private. The State statute also guarantees that public access will be provided. In these cases EPA will require the State to define exactly where the public access points are, and to provide written agreements between the State and particular private property owners specifying the conditions and limitations of the public access. We will also require permanent signs to show the public access points and specify any lake use limitations. Similarly, States could negotiate long terms leases or similar arrangements with private land owners, including private non-profits groups, to provide the necessary public access points. Again, we will require signs to indicate the limitations and extent of the public access. These arrangements would have to be completed before the award.

Eligibility

Some commenters suggested that section 314 cooperative agreements should continue to be awarded to local agencies. They contend that, otherwise, there will be a substantial erosion of the grassroots orientation of the program. We support the need to keep a grassroots thrust in the clean lakes program because of the voluntary nature of this assistance program. However, section 314 permits award of assistance only to States. Even so, since some States may not provide all the matching support required in clean lakes cooperative agreements, local agencies may provide the required remaining matching funds. We believe this funding partnership will preserve the grassroots nature of the program. We will work with the appropriate State agencies to assure that they minimize associated paperwork and "redtape," and provide clear concise guidance to local agencies. This will help to maintain the enthusiasm and involvement of local agencies.

EPA received several comments concerning the eligibility of Indian Tribes for section 314 funding. The commenters were concerned that, because Indian lands do not fall under the dominion of State Government, Tribal Governments may not be able to participate in this program. The statutory requirements of section 314 restricts award of assistance only to States. Section 35.1615 allows States to make financial arrangements with agencies located within the State including Indian Tribes to support lake restoration projects.

Some commenters objected to EPA's policy of not awarding assistance for lakes that are used only as drinking

water supplies. EPA has operated under this policy since the first awards under the clean lakes program in January 1970. We believe that the primary purpose of section 314 is to implement the goals of the Clean Water Act stated in section 101(n) as they relate to publicly owned freshwater lakes. Section 101(a)(2) states that, "... It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983." (emphasis added) The conference committee report of the 95th Congress, first session (House Report No. 95-830) made special note on page 94 in the comments of changes made to the Clean Water Act by the 1977 Amendments, that EPA should give special attention to restoring lakes which offer the potential for high utility as recreation areas. In keeping with the existing EPA policy and in support of the Congressional intent, we do not believe it is appropriate to allow funding of projects for lakes that are used only as drinking water supplies. Other funding sources are available to assist municipalities and States with protecting or improving drinking water supplies. Most communities accomplish this by assessing an appropriate water users fee under a regular billing procedure to support reservoir and processing plant operation and maintenance costs. Also, a portion of city and county taxes is likely to be used for such high priority community expenses.

Funding Levels

In the preamble of the proposed regulation, we requested comments on the proposed phasing of clean lakes cooperative agreements and the funding levels designated for each. The seventeen commenters who responded did not present persuasive arguments that the program would be more effective if the proposed matching requirements were reduced.

We continue to believe that the 50 percent matching requirement requires sufficient State/substate (non-Federal) commitment to assure the best project is implemented and proper maintenance of the project is continued after implementation is complete.

Lake Classification Requirement

A number of the comments concerned § 35.1630, requiring States to classify their publicly owned freshwater lakes in need of protection and restoration by January 1, 1982 in order to be eligible for funding support after that date under section 314. As explained in the

preamble of the proposed rule, this requirement does not mean that all of a State's publicly owned freshwater lakes must be surveyed, but a State must provide EPA with survey results of their priority lakes and the rationale for selecting the lakes surveyed. Other comments concerned EPA financial assistance to the States to perform the lake classification requirement. EPA will continue to award this cooperative agreement to States on a one-time-basis, under the July 10, 1978, Federal Register notice, until September 30, 1981. Approximately 20 States applied for this funding assistance. Most projects will be conducted over 18 months. We will restrict funding of this activity to a one-time award until all States electing to participate have initiated these efforts, and we have reviewed the overall program results.

Monitoring

A few commenters suggested the EPA should make available a third award phase for intensive monitoring of perhaps 10 percent of the implementation projects. The projects would be carefully selected to evaluate those lake restorative techniques that have little documentation on their capabilities and effectiveness. Although committed to strengthen the understanding of procedures to protect and restore the quality of the Nation's lakes, we continue to believe that some monitoring of each project during and after project implementation will provide us with a better review of program effectiveness than intensive monitoring in a few projects. However, we are encouraging EPA's Office of Research and Development to conduct a greater number of intensive investigations of lake protection and restoration techniques under the 104(h) authority of the Clean Water Act. We believe this approach will be responsive to both the program needs and the intent of the legislation.

Application and Priority

Several commenters asked how many Phase 1 and Phase 2 project applications an individual State could submit for funding consideration. The regulation does not specify a number. However, all applications must receive a State priority and we will consider the State priority placed on an application along with the other criteria presented in § 35.1640-1 when developing funding recommendations. We do foresee instances where, after considering all of these factors, a State may receive more than one of each type of cooperative agreement.

A significant number of comments were received on the required content of Phase 1 project applications. Most of these comments indicated that the information required is excessive and costly to assemble or obtain. As discussed in the preamble of the proposed rule, we believe that this information should be readily available to States and local agencies. No study or water quality monitoring is necessary to obtain the information since only the presentation of existing information is required. Furthermore, the information required in Phase 1 applications is precisely the information that participating States are required to assemble under their lake classification surveys conducted under the July 10, 1978, Federal Register notice.

We have reduced the mandatory information required in Phase 1 applications in response to those comments. Although not mandatory, § 35.1620-2(b) still includes a list of information that EPA believes should be in a Phase 1 application to allow EPA to effectively evaluate project applications and make funding decisions. Applications describing a proposed project in more complete terms may receive higher rating when evaluated according to the review criteria in § 35.1640-1.

EPA received four comments on the State requirement to set priorities on Phase 1 and Phase 2 projects as stated in § 35.1620-5. The commenters were concerned principally with the State capability to foresee specific projects 12 to 18 months in advance in sufficient detail to allow them to apply realistic funding priorities. We understand the problems associated with these procedures and realized that projects and associated priorities set more than a year in advance are subject to change. In § 35.1620-5 we have allowed States to alter project priority lists with a minimum of State effort. We need the information contained on State priority lists to determine program needs. We also need it to provide a basis for adjusting our workload to match the identified workload.

Allotment

In the preamble of the proposed regulation we request comments regarding the allocation of clean lakes program appropriations to assure an equitable distribution of funds among the States. We received 8 comments on this issue; 4 supporting the status quo, 1 one supporting the specification in the regulation of an annual deadline for application submission, and the other suggesting that an allocation of appropriations be made directly to the

les, although no formula was proposed. EPA's Office of General Counsel (OGC) and Grants Administration Division (GAD) suggested that a Regional allocation formula be considered as a means of providing equitable funding distribution. Despite the relatively small amount of program appropriations, we believe an allocation procedure has considerable merit. The advantages include: Regional flexibility in the negotiations with States for lake restoration projects, and better Regional capability to forecast workloads and develop appropriate manpower plans for annual budget submissions. Considering the advantages mentioned above, EPA will provide each Regional office a resource target from the section 314 appropriation based on State's identification of clean lakes work in the State WQM work programs. The State identification will consist of a two year forecasting of clean lakes applications, with funding needs, as part of the annual work program. The summation of these forecasts, coupled with the Congressional appropriation, will permit EPA to provide equitable resource targets. Regional offices will use these targets to negotiate projects within each State.

etting, based upon two year forecasting in work programs, will take effect in fiscal year 1982. For fiscal year 1981, EPA will target resources based on State-supplied information in existing State/EPA agreements, WQM work programs, and from the WQM Needs Survey.

Review Criteria

We have changed the application review criteria presented under § 35.1640-1 to reflect several comments. We have added a criterion to emphasize the importance of improving fish and wildlife habitat, and improving the populations of fish species.

A few commenters questioned the applicability of application review criteria § 35.1640-1(a)(4)(ii-iv). We believe that these criteria should be considered by States to judge the cost of a project in relation to public benefits derived, e.g., the more persons using a restored or protected lake the greater the benefits from the expenditure of public funds. Further, persons with low incomes cannot travel easily to lakes for recreational purposes unless the lakes close to have sufficient public transportation to them. Such factors should be considered in the decision making process. This component is not intended to preclude lakes in rural settings from receiving financial

assistance under the clean lakes program.

The project award procedures under § 35.1650 have been changed. All EPA funding decisions will be made in the EPA Regional office by officials designated by the Regional Administrator. Program guidance and technical assistance will be supplied by EPA Headquarters, and all project applications will receive Headquarters review and technical recommendations.

Limitations on Award

Most comments on § 35.1650-2 were editorial and only minor changes in the language of this section have been made. Specific comments questioned the exclusion of aquatic plant harvesting as a lake restoration procedure. Section 35.1650-2(b)(5) does not exclude aquatic plant harvesting from supportable lake restoration programs. However, we believe that aquatic plant harvesting is only a temporary restorative measure in cases where pollution control measures are not implemented in the watershed to the greatest practicable extent. Even in cases where such pollution controls are in place, nutrient loading to the lake may be so great that harvesting aquatic vegetation may be required regularly to allow use of the lake. We will not generally consider a project for aquatic plant harvesting unless it will result in long lasting improvements.

A few commenters were confused regarding the relationship between 208 State and areawide wastewater management planning and the eligibility of a State to receive section 314 support. Section 208 planning does not have to be approved for a State to receive clean lakes assistance. If a 208 plan has been approved, the pertinent and applicable pollution controls identified in the 208 plan must be included in a clean lakes implementation plan. If a 208 plan has not been approved but has been developed, the pertinent and applicable pollution controls identified in the 208 plan should be included in the clean lakes project. If there is no 208 planning, then the lake protection and restoration procedures developed under a section 314 project should be consistent with 208 planning procedures so that the lake restoration planning can be included in any future 208 planning activities for the particular lake area.

In order to assure that these procedures are followed, States must certify under § 35.1620-2(n), that a project is consistent with the State Water Quality Management work program (see § 35.1513). Under § 35.1620-2(b), Phase 1 applications shall include written certification from the appropriate areawide or State 208

planning agency that work conducted under the proposed project will not duplicate work completed under any 208 planning grant, and that the applicant proposes to use any applicable approved 208 planning in the clean lakes project design. Under § 35.1620-2(c), Phase 2 applications must contain written certification from appropriate areawide or State 208 planning agencies that the proposed Phase 2 lake restoration proposal is consistent with any approved 208 planning.

One commenter suggested that 314 funding should be restricted so that it is not used to enhance boating or onshore recreational opportunities. EPA did not include these restrictions in the regulations for a variety of reasons. Lakes are traditionally used as recreational sites by the general public, and the degradation of those recreational sites through water pollution prompted the Congress to include section 314 in the Clean Water Act. EPA is supportive of the multiple use concept in the use of public funds. Frequently, the heavy use of the immediate lake shore will promote excessive pollutant loading, e.g., sediment and plant nutrients. In some cases, outright purchase of these lands to provide buffer strips is the most effective method of pollution control. Often lake shores can be used for low intensity recreational activities. Similarly, land abutting the lake may be purchased to provide an area to build a lake treatment structure and these areas should be considered for recreational opportunities.

Since recreational opportunities and water quality can sometimes be improved by removal of accumulated lake sediments, it would be inappropriate for EPA to ban dredging as an element of a comprehensive lake restoration project solely because it would benefit recreational activities.

As a means to assure that adverse environmental impact mitigation procedures are implemented in a lake restoration project, we have removed the 20 percent restriction on the cost of mitigation activities. All necessary mitigation activities should be included in the project. If mitigation costs are excessive, then the public benefits, when evaluated against project costs, will be lower and a proposed project will have lower priority for funding.

Conditions on Award

Numerous commenters were concerned about payment of the non-Federal share of a project by the State. We have modified § 35.1650-3(a)(2) to allow a State to arrange financing through substate financial agreements.

We understand that in many instances local agencies will be providing some or all of the required non-Federal matching share for clean lakes projects. It should be noted that as the only eligible award recipient, the State assumes the ultimate responsibility for the non-Federal share.

Some commenters argued that the monitoring program required under Appendix A (b)(3) is defined too rigidly. We agree, so we have modified the regulation to allow States and project officers to negotiate a program that is appropriate for each project.

Most commenters on the award conditions believe the requirement that States must maintain a project for ten years after a project is completed is excessive. We believe that States should agree to an operation and maintenance program that would assure that effective pollution controls are maintained to maximize the benefits in relation to the cost of the project. We believe that 10 years is a reasonable amount of time. Because we have no data to defend the cost effectiveness of this condition, it has been modified to cover only the project period. We believe the commitment by a State to an effective operation and maintenance program in the post project period is important and should be given special consideration in the evaluation of project proposals. Therefore, the evaluation criteria have been modified in § 35.1640-1 to include an assessment of the adequateness of the proposed post project operation and maintenance program.

We have changed section 35.1650-3(b) to allow Phase 1 recipients to negotiate with the project officer the project scope of work that is stated in section (a)(10) of Appendix A. Many commenters argued that the information required by section (a)(10) should be determined on a case by case basis. We believe that flexibility is desirable and will minimize project costs without sacrificing program integrity and public benefits. Similarly, we have modified § 35.1650-3(c) to allow flexibility on the design of Phase 2 monitoring programs to fulfill the requirement of section (b)(3) of Appendix A. Again, EPA project officer approval is required before the scope of work can be modified.

EPA received a significant number of comments on the reporting requirements in § 35.1650-5. The commenters were critical of the number of reports required and the amount of information required in Phase 1 project progress reports. Accordingly, we have modified the reporting requirements so that Phase 1 reports are only required semi-annually, and the final report will be the only Phase 2 report requiring the submission of water quality data. The frequency of

Phase 2 reporting will not exceed quarterly and will be based on the complexity of the project. The reporting requirement will be stipulated in the cooperative agreement.

Several commenters requested clarification of subsection (a)(7) of Appendix A. We believe that recipients and EPA should have sufficient information about the usability of other lakes in proximity to the project lake to evaluate the benefits in relation to the costs of a proposed project. The funds available to support lake protection and restoration activities are limited. Information required by subsection (a)(7) should be helpful to States in establishing priorities for projects. The regulations do not require States to conduct exhaustive surveys of lake resources within a 80 kilometer radius of the project lake, but we do need an understanding of similar lake use opportunities in that distance to assure appropriate use of public funds.

A few comments concerned the procedures used to determine the limiting nutrient in lakes. Section (a)(10) of Appendix A requires the calculation of total nitrogen to total phosphorus ratios and/or the use of the algal assay bottle tests. One commenter stated that the algal assay bottle test should be a required procedure. Although the bottle test is an excellent investigative procedure, we believe that many States lack the appropriate equipment to perform these analyses and the costs would be excessive in some cases. Other commenters suggested that other forms of nitrogen and phosphorus should be used to calculate the N/P ratio. We are aware of the significant controversy over the appropriateness and reproducibility of tests using other fractional chemical forms of these nutrients. EPA believes that at this time, the total nitrogen and total phosphorus ratio is the most desirable test. Appendix A calls for the measurement of several chemical forms of these nutrients. Investigators and EPA may wish to calculate other ratios in addition to total nitrogen to total phosphorus using these measurements.

Since the publication of the proposed rules, EPA's Administrator on June 14, 1979, signed a memorandum to assure that all environmental measurements done with EPA funding result in usable data of known quality. Any clean lakes cooperative agreements, awarded after OMB approves the Administrator's directive under the Federal Reports Act will contain a condition requiring compliance.

State/EPA Agreement

In these and other regulations, we are developing the concept of a State/EPA Agreement. The Agreement will provide a way for EPA Regional Administrator and States to coordinate a variety of programs under the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act and other laws administered by EPA. This subpart governs only that part of the State/EPA Agreement which relates to cooperative agreements under the clean lakes program. Other programs included in the State/EPA Agreement will be governed by provisions found elsewhere in this chapter. Beginning in FY 1980, State programs funded under section 314 of the Act will be part of the State/EPA Agreement and the State/EPA Agreement must be completed before grant award. EPA will issue guidance concerning the development and the content of the State/EPA Agreement.

Regulatory Analysis

We have determined that this regulation does not require regulatory analysis under Executive Order 12044.

Evaluation

Section 2(d)(8) of Executive Order 12044 requires that each regulation be accompanied by a plan for evaluating regulation after it issued. In order to comply with this requirement, EPA will conduct an evaluation of this regulation which will either be presented in the section 304(j) report, which is scheduled to be published in December 1981, or published separately.

Dated: January 28, 1980.
Douglas M. Costle,
Administrator.

PART 35, SUBPART H ADDED

EPA is amending Title 40 of the Code of Federal Regulations by adding a new Subpart H to Part 35 to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart H—Cooperative Agreements for Protecting and Restoring Publicly Owned Freshwater Lakes

- Sec.
35.1600 Purpose.
35.1603 Summary of clean lakes assistance program.
35.1605 Definitions.
35.1605-1 The Act.
35.1605-2 Freshwater lake.
35.1605-3 Publicly owned freshwater lake.
35.1605-4 Nonpoint source.
35.1605-5 Eutrophic lake.

Sec.

- 35.1605-6 Trophic condition.
- 35.1605-7 Desalinization.
- 35.1605-8 Diagnostic-feasibility study.
- 35.1610 Eligibility.
- 35.1613 Distribution of funds.
- 35.1615 Substate agreements.
- 35.1620 Application requirements.
- 35.1620-1 Types of assistance.
- 35.1620-2 Contents of applications.
- 35.1620-3 Environmental evaluation.
- 35.1620-4 Public participation.
- 35.1620-5 State work programs and lake priority lists.
- 35.1620-6 State and local clearinghouse procedures.
- 35.1630 State lake classification surveys.
- 35.1640 Application review and evaluation.
- 35.1640-1 Application review criteria.
- 35.1650 Award.
- 35.1650-1 Project period.
- 35.1650-2 Limitations on awards.
- 35.1650-3 Conditions on awards.
- 35.1650-4 Payment.
- 35.1650-5 Allowable costs.
- 35.1650-6 Reports.
- Appendix A Requirements for diagnostic-feasibility studies and environmental evaluations.

Authority: Secs. 314 and 501, Clean Water Act (88 Stat. 816; 33 U.S.C. 1251 *et seq.*)

Subpart H—Cooperative Agreements For Protecting and Restoring Publicly Owned Freshwater Lakes

§ 35.1600 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and establishes policies and procedures for cooperative agreements to assist States in carrying out approved methods and procedures for restoration (including protection against degradation) of publicly owned freshwater lakes.

§ 35.1603 Summary of clean lakes assistance program.

(a) Under section 314 of the Clean Water Act, EPA may provide financial assistance to States to implement methods and procedures to protect and restore publicly owned freshwater lakes. Although cooperative agreements may be awarded only to States, these regulations allow States, through substate agreements, to delegate some or all of the required work to substate agencies.

(b) Only projects that deal with publicly owned freshwater lakes are eligible for assistance. The State must have assigned a priority to restore the lake, and the State must certify that the lake project is consistent with the State Water Quality Management Plan (§ 35.1521) developed under the State/EPA Agreement. The State/EPA Agreement is a mechanism for EPA Regional Administrators and States to coordinate a variety of programs under the Clean Water Act, the Resource

Conservation and Recovery Act, the Safe Drinking Water Act and other laws administered by EPA.

(c) These regulations provide for Phase 1 and 2 cooperative agreements. The purpose of a Phase 1 cooperative agreement is to allow a State to conduct a diagnostic-feasibility study to determine a lake's quality, evaluate possible solutions to existing pollution problems, and recommend a feasible program to restore or preserve the quality of the lake. A Phase 2 cooperative agreement is to be used for implementing recommended methods and procedures for controlling pollution entering the lake and restoring the lake. EPA award of Phase 1 assistance does not obligate EPA to award Phase 2 assistance for that project. Additionally, a Phase 1 award is not a prerequisite for receiving a Phase 2 award. However, a Phase 2 application for a proposed project that was not evaluated under a Phase 1 project shall contain the information required by Appendix A.

(d) EPA will evaluate all applications in accordance with the application review criteria of § 35.1640-1. The review criteria include technical feasibility, public benefit, reasonableness of proposed costs, environmental impact, and the State's priority ranking of the lake project.

(e) Before awarding funding assistance, the Regional Administrator shall determine that pollution control measures in the lake watershed authorized by section 201, included in an approved 208 plan, or required by section 402 of the Act are completed or are being implemented according to a schedule that is included in an approved plan or discharge permit. Clean lakes funds may not be used to control the discharge of pollutants from a point source where the cause of pollution can be alleviated through a municipal or industrial permit under section 402 of the Act or through the planning and construction of wastewater treatment facilities under section 201 of the Act.

§ 35.1605 Definitions.

The terms used in this subpart have the meanings defined in section 502 of the Act. In addition, the following terms shall have the meaning set forth below.

§ 35.1605-1 The Act.

The Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

§ 35.1605-2 Freshwater lake.

Any inland pond, reservoir, impoundment, or other similar body of water that has recreational value, that exhibits no oceanic and tidal influences,

and that has a total dissolved solids concentration of less than 1 percent.

§ 35.1605-3 Publicly owned freshwater lake.

A freshwater lake that offers public access to the lake through publicly owned contiguous land so that any person has the same opportunity to enjoy non-consumptive privileges and benefits of the lake as any other person. If user fees are charged for public use and access through State or substate operated facilities, the fees must be used for maintaining the public access and recreational facilities of this lake or other publicly owned freshwater lakes in the State, or for improving the quality of these lakes.

§ 35.1605-4 Nonpoint source.

Pollution sources which generally are not controlled by establishing effluent limitations under sections 301, 302, and 402 of the Act. Nonpoint source pollutants are not traceable to a discrete identifiable origin, but generally result from land runoff, precipitation, drainage, or seepage.

§ 35.1605-5 Eutrophic lake.

A lake that exhibits any of the following characteristics: (a) Excessive biomass accumulations of primary producers; (b) rapid organic and/or inorganic sedimentation and shallowing; or (c) seasonal and/or diurnal dissolved oxygen deficiencies that may cause obnoxious odors, fish kills, or a shift in the composition of aquatic fauna to less desirable forms.

§ 35.1605-6 Trophic condition.

A relative description of a lake's biological productivity based on the availability of plant nutrients. The range of trophic conditions is characterized by the terms of oligotrophic for the least biologically productive, to eutrophic for the most biologically productive.

§ 35.1605-7 Desalinization.

Any mechanical procedure or process where some or all of the salt is removed from lake water and the freshwater portion is returned to the lake.

§ 35.1605-8 Diagnostic-feasibility study.

A two part study to determine a lake's current condition and to develop possible methods for lake restoration and protection.

(a) The diagnostic portion of the study includes gathering information and data to determine the limnological, morphological, demographic, socio-economic, and other pertinent characteristics of the lake and its watershed. This information will provide recipients an understanding of

the quality of the lake, specifying the location and loading characteristics of significant sources polluting the lake.

(b) The feasibility portion of the study includes: (1) Analyzing the diagnostic information to define methods and procedures for controlling the sources of pollution; (2) determining the most energy and cost efficient procedures to improve the quality of the lake for maximum public benefit; (3) developing a technical plan and milestone schedule for implementing pollution control measures and in-lake restoration procedures; and (4) if necessary, conducting pilot scale evaluations.

§ 35.1610. Eligibility.

EPA shall award cooperative agreements for restoring publicly owned freshwater lakes only to the State agency designated by the State's Chief Executive. The award will be for projects which meet the requirements of this subchapter.

§ 35.1613. Distribution of funds.

(a) For each fiscal year EPA will notify each Regional Administrator of the amount of funds targeted for each Region through annual clean lakes program guidance. To assure an equitable distribution of funds the targeted amounts will be based on the clean lakes program which States identify in their State WQM work programs.

(b) EPA may set aside up to twenty percent of the annual appropriations for Phase 1 projects.

§ 35.1615. Substate agreements.

States may make financial assistance available to substate agencies by means of a written interagency agreement transferring project funds from the State to those agencies. The agreement shall be developed, administered and approved in accordance with the provisions of 40 CFR 33.240 (Intergovernmental agreements). A State may enter into an agreement with a substate agency to perform all or a portion of the work under a clean lakes cooperative agreement. Recipients shall submit copies of all interagency agreements to the Regional Administrator. If the sum involved exceeds \$100,000, the agreement shall be approved by the Regional Administrator before funds are released by the State to the substate agency. The agreement shall incorporate by reference the provisions of this subchapter. The agreement shall specify outputs, milestone schedule, and the budget required to perform the associated work in the same manner as the cooperative agreement between the State and EPA.

§ 35.1620. Application requirements.

(a) EPA will process applications in accordance with Subpart B of Part 30 of this subchapter. Applicants for assistance under the clean lakes program shall submit EPA form 5700-33 (original with signature and two copies) to the appropriate EPA Regional Office (see 40 CFR 30.130).

(b) Before applying for assistance, applicants should contact the appropriate Regional Administrator to determine EPA's current funding capability.

§ 35.1620-1 Types of assistance.

EPA will provide assistance in two phases in the clean lakes program.

(a) *Phase 1—Diagnostic-feasibility studies.* Phase 1 awards of up to \$100,000 per award (requiring a 30 percent non-Federal share) are available to support diagnostic-feasibility studies (see Appendix A).

(b) *Phase 2—Implementation.* Phase 2 awards (requiring a 50 percent non-Federal share) are available to support the implementation of pollution control and/or in-lake restoration methods and procedures including final engineering design.

§ 35.1620-2 Contents of applications.

(a) All applications shall contain a written State certification that the project is consistent with State Water Quality Management work program (see § 35.1513 of this subchapter) and the State Comprehensive Outdoor Recreation Plan (if completed). Additionally, the State shall indicate the priority ranking for the particular project (see § 35.1620-5).

(b) Phase 1 applications shall contain: (1) A narrative statement describing the specific procedures that will be used by the recipient to conduct the diagnostic-feasibility study including a description of the public participation to be involved (see § 25.11 of this chapter);

(2) A milestone schedule;

(3) An itemized cost estimate including a justification for these costs;

(4) A written certification from the appropriate areawide or State 208 planning agency that the proposed work will not duplicate work completed under any 208 planning grant, and that the applicant is proposing to use any applicable approved 208 planning in the clean lakes project design; and

(5) For each lake being investigated, the information under subparagraph (5)(i) of this paragraph and, when available, the information under subparagraph (5)(ii) of this paragraph.

(i) Mandatory information.

(A) The legal name of the lake, reservoir, or pond.

(B) The location of the lake within the State, including the latitude and longitude, in degrees, minutes, and seconds of the approximate center of the lake.

(C) A description of the physical characteristics of the lake, including its maximum depth (in meters); its mean depth (in meters); its surface area (in hectares); its volume (in cubic meters); the presence or absence of stratified conditions; and major hydrologic inflows and outflows.

(D) A summary of available chemical and biological data demonstrating the past trends and current water quality of the lake.

(E) A description of the type and amount of public access to the lake, and the public benefits that would be derived by implementing pollution control and lake restoration procedures.

(F) A description of any recreational uses of the lake that are impaired due to degraded water quality. Indicate the cause of the impairment, such as algae, vascular aquatic plants, sediments, or other pollutants.

(G) A description of the local interests and fiscal resources committed to restoring the lake.

(H) A description of the proposed monitoring program to provide the information required in Appendix A, paragraph (a)(10) of this section.

(ii) Discretionary information. States should submit this information when available to assist EPA in reviewing the application.

(A) A description of the lake watershed in terms of size, land use (list each major land use classification as a percentage of the whole), and the general topography, including major soil types.

(B) An identification of the major point source pollution discharges in the watershed. If the sources are currently controlled under the National Pollutant Discharge Elimination System (NPDES), include the permit numbers.

(C) An estimate of the percent contribution of total nutrient and sediment loading to the lake by the identified point sources.

(D) An indication of the major nonpoint sources in the watershed. If the sources are being controlled describe the control practice(s), including best land management practices.

(E) An indication of the lake restoration measures anticipated, including watershed management, and a projection of the net improvement in water quality.

(F) A statement of known or anticipated adverse environmental impacts resulting from lake restoration.

(c) Phase 2 applications shall include:

(1) The information specified in Appendix A in a diagnostic/feasibility study or its equivalent; (2) certification by the appropriate areawide or State 208 planning agencies that the proposed Phase 2 lake restoration proposal is consistent with any approved 208 planning; and (3) copies of all issued permits or permit applications (including a summary of the status of applications) that are required for the discharge of dredged or fill material under section 404 of the Act.

§ 35.1620-3 Environmental evaluation.

Phase 2 applicants shall submit an evaluation of the environmental impacts of the proposed project in accordance with the requirements in Appendix A of this regulation.

§ 35.1620-4 Public participation.

(a) *General.* (1) In accordance with this Part and Part 25 of this chapter, the applicant shall provide for, encourage, and assist public participation in developing a proposed lake restoration project.

(2) Public consultation may be coordinated with related activities to enhance the economy, the effectiveness, and the timeliness of the effort, or to enhance the clarity of the issue. This procedure shall not discourage the widest possible participation by the public.

(b) *Phase 1.* (1) Phase 1 recipients shall solicit public comment in developing, evaluating, and selecting alternatives; in assessing potential adverse environmental impacts; and in identifying measures to mitigate any adverse impacts that were identified. The recipient shall provide information relevant to these decisions, in fact sheet or summary form, and distribute them to the public at least 30 days before selecting a proposed method of lake restoration. Recipients shall hold a formal or informal meeting with the public after all pertinent information is distributed, but before a lake restoration method is selected. If there is significant public interest in the cooperative agreement activity, an advisory group to study the process shall be formed in accordance with the requirements of § 25.3(d)(4) of this chapter.

(2) A formal public hearing shall be held if the Phase 1 recipient selects a lake restoration method that involves major construction, dredging, or significant modifications to the environment, or if the recipient or the Regional Administrator determines that a hearing would be beneficial.

(c) *Phase 2.* (1) A summary of the recipient's response to all public

comments, along with copies of any written comments, shall be prepared and submitted to EPA with a Phase 2 application.

(2) Where a proposed project has not been studied under a Phase 1 cooperative agreement, the applicant for Phase 2 assistance shall provide an opportunity for public consultation with adequate and timely notices before submitting an application to EPA. The public shall be given the opportunity to discuss the proposed project, the alternatives, and any potentially adverse environmental impacts. A public hearing shall be held where the proposed project involves major construction, dredging or other significant modification of the environment. The applicant shall provide a summary of his responses to all public comments and submit the summary, along with copies of any written comments, with the application.

§ 35.1620-5 State work programs and lake priority lists.

(a)(1) A State shall submit to the Regional Administrator as part of its annual work program (§ 35.1513 of this subchapter) a description of the activities it will conduct during the Federal fiscal year to classify its lakes according to trophic condition (§ 35.1630) and to set priorities for implementing clean lakes projects within the State. The work plan must list in priority order the cooperative agreement applications that will be submitted by the State for Phase 1 and Phase 2 projects during the upcoming fiscal year, along with the rationale used to establish project priorities. Each State must also list the cooperative agreement applications, with necessary funding, which it expects to submit in the following fiscal year. This information will assist EPA in targeting resources under § 35.1613.

(2) A State may petition the Regional Administrator by letter to modify the EPA approved priority list established under paragraph (a)(1) of this section. This may be done at any time if the State believes there is sufficient justification to alter the priority list contained in its annual work program, e.g., if a community with a lower priority project has sufficient resources available to provide the required matching funding while a higher priority project does not, or if new data indicates that a lower priority lake will have greater public benefit than a higher priority lake.

(b) Clean lakes restoration priorities should be consistent with the Statewide water quality management strategy (see § 35.1511-2 of this subchapter). In

establishing priorities on particular lake restoration projects, States should use as criteria the application review criteria (§ 35.1640-1) that EPA will use in preparing funding recommendations for specific projects. If a State chooses to use different criteria, the State should indicate this to the Regional Administrator as part of the annual work program.

§ 35.1620-6 State and local clearinghouse procedures.

In accordance with § 30.305 of this subchapter, all requirements of OMB Circular A-95 must be met before States submit applications to EPA.

§ 35.1630 State lake classification surveys.

States that wish to participate in the clean lakes program shall establish and submit to EPA by January 1, 1982, a classification, according to trophic condition, of their publicly owned freshwater lakes that are in need of restoration or protection. After December 31, 1981, States that have not complied with this requirement will not be eligible for Federal financial assistance under this subpart until they complete their survey.

§ 35.1640 Application review and evaluation.

EPA will review applications as they are received. EPA may request outside review by appropriate experts to assist with technical evaluation. Funding decisions will be based on the merit of each application in accordance with the application review criteria under § 35.1640-1. EPA will consider Phase 1 applications separately from Phase 2 applications.

§ 35.1640-1 Application review criteria.

(a) When evaluating applications, EPA will consider information supplied by the applicant which address the following criteria:

(1) The technical feasibility of the project, and where appropriate, the estimated improvement in lake water quality.

(2) The anticipated positive changes that the project would produce in the overall lake ecosystem, including the watershed, such as the net reduction in sediment, nutrient, and other pollutant loadings.

(3) The estimated improvement in fish and wildlife habitat and associated beneficial effects on specific fish populations of sport and commercial species.

(4) The extent of anticipated benefits to the public. EPA will consider such factors as (i) the degree, nature and sufficiency of public access to the lake;

(ii) the size and economic structure of the population residing near the lake which would use the improved lake for recreational and other purposes; (iii) the amount and kind of public transportation available for transport of the public to and from the public access points; (iv) whether other relatively clean publicly owned freshwater lakes within 80 kilometer radius already adequately serve the population; and (v) whether the restoration would benefit primarily the owners of private land adjacent to the lake.

(5) The degree to which the project considers the "open space" policies contained in sections 201(f), 201(g), and 208(b)(2)(A) of the Act.

(6) The reasonableness of the proposed costs relative to the proposed work, the likelihood that the project will succeed, and the potential public benefits.

(7) The means for controlling adverse environmental impacts which would result from the proposed restoration of the lake. EPA will give specific attention to the environmental concerns listed in Section (c) of Appendix A.

(8) The State priority ranking for a particular project.

(9) The State's operation and maintenance program to ensure that the pollution control measures and/or in-lake restorative techniques supported under the project will be continued after the project is completed.

(b) For Phase 1 applications, the review criteria presented in paragraph (a) of this section will be modified in relation to the smaller amount of technical information and analysis that is available in the application. Specifically, under criterion (a)(1), EPA will consider a technical assessment of the proposed project approach to meet the requirements stated in Appendix A to this regulation. Under criterion (a)(4), EPA will consider the degree of public access to the lake and the public benefit. Under criterion (a)(7), EPA will consider known or anticipated adverse environmental impacts identified in the application or that EPA can presume will occur. Criterion (a)(9) will not be considered.

§ 35.1650 Award.

(a) Under 40 CFR 30.345, generally 90 days after EPA has received a complete application, the application will either be: (1) Approved for funding in an amount determined to be appropriate for the project; (2) returned to the applicant due to lack of funding; or (3) disapproved. The applicant shall be promptly notified in writing by the EPA Regional Administrator of any funding decisions.

(b) Applications that are disapproved can be submitted as new applications to EPA if the State resolves the issues identified during EPA review.

§ 35.1650-1 Project period.

(a) The project period for Phase 1 projects shall not exceed three years.

(b) The project period for Phase 2 projects shall not exceed four years. Implementation of complex projects and projects incorporating major construction may have longer project periods if approved by the Regional Administrator.

§ 35.1650-2 Limitations on awards.

(a) Before awarding assistance, the Regional Administrator shall determine that:

(1) The applicant has met all of the applicable requirements of § 35.1620 and § 35.1630; and

(2) State programs under section 314 of the Act are part of a State/EPA Agreement which shall be completed before the project is awarded.

(b) Before awarding Phase 2 projects, the Regional Administrator shall further determine that:

(1) When a Phase 1 project was awarded, the final report prepared under Phase 1 is used by the applicant to apply for Phase 2 assistance. The lake restoration plan selected under the Phase 1 project must be implemented under a Phase 2 cooperative agreement.

(2) Pollution control measures in the lake watershed authorized by section 201, included in an approved 208 plan, or required by section 402 of the Act have been completed or are being implemented according to a schedule that is included in an approved plan or discharge permit.

(3) The project does not include costs for controlling point source discharges of pollutants where those sources can be alleviated by permits issued under section 402 of the Act, or by the planning and construction of wastewater treatment facilities under section 201 of the Act.

(4) The State has appropriately considered the "open space" policy presented in sections 201(f), 201(g)(6), and 208(b)(2)(A) of the Act in any wastewater management activities being implemented by them in the lake watershed.

(5)(i) The project does not include costs for harvesting aquatic vegetation, or for chemical treatment to alleviate temporarily the symptoms of eutrophication, or for operating and maintaining lake aeration devices, or for providing similar palliative methods and procedures, unless these procedures are the most energy efficient or cost

effective lake restorative method. (ii) Palliative approaches can be supported only where pollution in the lake watershed has been controlled to the greatest practicable extent, and where such methods and procedures are a necessary part of a project during the project period. EPA will determine the eligibility of such a project, based on the applicant's justification for the proposed restoration, the estimated time period for improved lake water quality, and public benefits associated with the restoration.

(6) The project does not include costs for desalinization procedures for naturally saline lakes.

(7) The project does not include costs for purchasing or long term leasing of land used solely to provide public access to a lake.

(8) The project does not include costs resulting from litigation against the recipient by EPA.

(9) The project does not include costs for measures to mitigate adverse environmental impacts that are not identified in the approved project scope of work. (EPA may allow additional costs for mitigation after it has reevaluated the cost-effectiveness of the selected alternative and has approved a request for an increase from the recipient.)

§ 35.1650-3 Conditions on award.

(a) *All awards.* (1) All assistance awarded under the Clean Lakes program is subject to the EPA General Grant conditions (Subpart C and Appendix A of Part 30 of this chapter). (2) For each clean lakes project the State agrees to pay or arrange the payment of the non-Federal share of the project costs.

(b) *Phase 1.* Phase 1 projects are subject to the following conditions:

(1) The recipient must receive EPA project officer approval on any changes to satisfy the requirements of (a)(10) of Appendix A before undertaking any other work under the grant.

(2) (i) Before selecting the best alternative for controlling pollution and improving the lake, as required in paragraph (b)(1) of Appendix A of this regulation, and before undertaking any other work stated under paragraph (b) of Appendix A, the recipient shall submit an interim report to the project officer. The interim report must include a discussion of the various available alternatives and a technical justification for the alternative that the recipient will probably choose. The report must include a summary of the public involvement and the comments that occurred during the development of the alternatives. (ii) The recipient must obtain EPA project officer approval of

(4) A description of the size and economic structure of the population residing near the lake which would use the improved lake for recreation and other purposes.

(5) A summary of historical lake uses, including recreational uses up to the present time, and how these uses may have changed because of water quality degradation.

(6) An explanation, if a particular segment of the lake user population is or will be more adversely impacted by lake degradation.

(7) A statement regarding the water use of the lake compared to other lakes within a 80 kilometer radius.

(8) An itemized inventory of known point source pollution discharges affecting or which have affected lake water quality over the past 5 years, and the abatement actions for these discharges that have been taken, or are in progress. If corrective action for the pollution sources is contemplated in the future, the time period should be specified.

(9) A description of the land uses in the lake watershed, listing each land use classification as a percentage of the whole and discussing the amount of nonpoint pollutant loading produced by each category.

(10) A discussion and analysis of historical baseline limnological data and one year of current limnological data. The monitoring schedule presented in paragraph (b)(3) of Appendix A must be followed in obtaining the one year of current limnological data. This presentation shall include the present trophic condition of the lake as well as its surface area (hectares), maximum depth (meters), average depth (meters), hydraulic residence time, the area of the watershed draining to the lake (hectares), and the physical, chemical, and biological quality of the lake and important lake tributary waters. Bathymetric maps should be provided. If dredging is expected to be included in the restoration activities, representative bottom sediment core samples shall be collected and analyzed using methods approved by the EPA project officer for phosphorus, nitrogen, heavy metals, other chemicals appropriate to State water quality standards, and persistent synthetic organic chemicals where appropriate. Further, the elutriate must be subjected to test procedures developed by the U.S. Army Corps of Engineers and analyzed for the same constituents. An assessment of the phosphorus (and nitrogen when it is the limiting lake nutrient) inflows and outflows associated with the lake and a hydraulic budget including ground water flow must be included. Vertical

temperature and dissolved oxygen data must be included for the lake to determine if the hypolimnion becomes anoxic and, if so, for how long and over what extent of the bottom. Total and soluble reactive phosphorus (P); and nitrite, nitrate, ammonia and organic nitrogen (N) concentrations must be determined for the lake. Chlorophyll *a* values should be measured for the upper mixing zone. Representative alkalinities should be determined. Algal assay bottle test data or total N to total P ratios should be used to define the growth limiting nutrient. The extent of algal blooms, and the predominant algal genera must be discussed. Algal biomass should be determined through algal genera identification, cell density counts (numbers of cells per milliliter) and converted to cell volume based on factors derived from direct measurements; and reported in biomass of each major genus identified. Secchi disk depth and suspended solids should be measured and reported. The portion of the shoreline and bottom that is impacted by vascular plants (submersed, floating, or emergent higher aquatic vegetation) must be estimated, specifically the lake surface area between 0 and the 10 meter depth contour or twice the Secchi disk transparency depth, whichever is less, and that estimate should include an identification of the predominant species. Where a lake is subject to significant public contact use or is fished for consumptive purposes, monitoring for public health reasons should be part of the monitoring program. Standard bacteriological analyses and fish flesh analyses for organic and heavy metal contamination should be included.

(11) An identification and discussion of the biological resources in the lake, such as fish population, and a discussion of the major known ecological relationships.

(b) A feasibility study consisting of:

(1) An identification and discussion of the alternatives considered for pollution control or lake restoration and an identification and justification of the selected alternative. This should include a discussion of expected water quality improvement, technical feasibility, and estimated costs of each alternative. The discussion of each feasible alternative and the selected lake restoration procedure must include detailed descriptions specifying exactly what activities would be undertaken under each, showing how and where these procedures would be implemented, illustrating the engineering specifications that would be followed

including preliminary engineering drawings to show in detail the construction aspects of the project, and presenting a quantitative analysis of the pollution control effectiveness and the lake water quality improvement that is anticipated.

(2) A discussion of the particular benefits expected to result from implementing the project, including new public water uses that may result from the enhanced water quality.

(3) A Phase 2 monitoring program indicating the water quality sampling schedule. A limited monitoring program must be maintained during project implementation, particularly during construction phases or in-lake treatment, to provide sufficient data that will allow the State and the EPA project officer to redirect the project if necessary. To ensure desired objectives are achieved. During pre-project, implementation, and post-project monitoring activities, a single in-lake site should be sampled monthly during the months of September through April and biweekly during May through August. This site must be located in an area that best represents the limnological properties of the lake, preferably the deepest point in the lake. Additional sampling sites may be warranted in cases where lake basin morphometry creates distinctly different hydrologic and limnologic sub-basins; or where major lake tributaries adversely affect lake water quality. The sampling schedule may be shifted according to seasonal differences at various latitudes. The biweekly samples must be scheduled to coincide with the period of elevated biological activity. If possible, a set of samples should be collected immediately following spring turnover of the lake. Samples must be collected between 0800 and 1600 hours of each sampling day unless diel studies are part of the monitoring program. Samples must be collected between one-half meter below the surface and one-half meter off the bottom, and must be collected at intervals of every one and one-half meters, or at six equal depth intervals, whichever number of samples is less. Collection and analyses of all samples must be conducted according to EPA approved methods. All of the samples collected must be analyzed for total and soluble reactive phosphorus; nitrite, nitrate, ammonia, and organic nitrogen; pH; temperature; and dissolved oxygen. Representative alkalinities should be determined. Samples collected in the upper mixing zone must be analyzed for chlorophyll *a*. Algal biomass in the upper mixing zone should be determined through algal genera

ification, cell density counts (number of cells per milliliter) and cell volume based on measurements derived from direct measurements; and reported in terms of size of each major genera identified. Disk depth and suspended solids be measured at each sampling station. The surface area of the lake covered by macrophytes between 0 and 1 meter depth contour or twice the disk transparency depth, whichever is less, must be reported. The monitoring program for each clean lakes must include all the required information mentioned above, in addition to any specific measurements determined to be necessary to assess various aspects of the project. Based on information supplied by the Phase 2 applicant and the technical evaluation of the proposal, a detailed monitoring program for Phase 2 will be established for each approved project. It will be a condition of the cooperative agreement. Phase 2 projects are monitored for at least one year after construction or pollution control measures are completed to evaluate their effectiveness.

A proposed milestone work schedule for completing the project with proposed budget and a payment schedule that is related to the milestone. A detailed description of how non-Federal funds will be obtained for the proposed project.

A description of the relationship of the proposed project to pollution control programs such as the section 201 construction grants program, the section 404 nationwide wastewater management program, the Department of Agriculture Conservation Service and Wildlife Stabilization and Restoration Service programs, the Department of Housing and Urban Development block grant program, the Department of Interior Heritage Conservation and Recreation Service programs and any other local, State, Federal and Federal programs that may be related to the proposed project.

A summary of any pertinent correspondence, reports, grant applications and documents associated with these programs must be provided to the EPA project officer.

A summary of public participation in developing and assessing the proposed project which is in compliance with Part 25 of this chapter. The summary shall describe the matters presented before the public, the measures taken by the reporting agency to meet its obligations under Part 25 and any provisions elsewhere in this chapter, the public response, and the agency's response to significant

comments. Part 25.8 responsiveness summaries may be used to meet appropriate portions of these requirements to avoid duplication.

(8) A description of the operation and maintenance plan that the State will follow, including the time frame over which this plan will be operated, to ensure that the pollution controls implemented during the project are continued after the project is completed.

(9) Copies of all permits or pending permit applications (including the status of such applications) necessary to satisfy the requirements of section 404 of the Act. If the approved project includes dredging activities or other activities requiring permits, the State must obtain from the U.S. Army Corps of Engineers or other agencies the permits required for the discharge of dredged or fill material under section 404 of the Act or other Federal, State or local requirements. Should additional information be required to obtain these permits, the State shall provide it. Copies of section 404 permit applications and any associated correspondence must be provided to the EPA project officer at the time they are submitted to the U.S. Army Corps of Engineers. After reviewing the 404 permit application, the project officer may provide recommendations for appropriate controls and treatment of supernatant derived from dredged material disposal sites to ensure the maximum effectiveness of lake restoration procedures.

(c) States shall complete and submit an environmental evaluation which considers the questions listed below. In many cases the questions cannot be satisfactorily answered with a mere "Yes" or "No". States are encouraged to address other considerations which they believe apply to their project.

(1) Will the proposed project displace any people?

(2) Will the proposed project deface existing residences or residential areas? What mitigative actions such as landscaping, screening, or buffer zones have been considered? Are they included?

(3) Will the proposed project be likely to lead to a change in established land use patterns, such as increased development pressure near the lake? To what extent and how will this change be controlled through land use planning, zoning, or through other methods?

(4) Will the proposed project adversely affect a significant amount of prime agricultural land or agricultural operations on such land?

(5) Will the proposed project result in a significant adverse effect on parkland,

other public land, or lands of recognized scenic value?

(6) Has the State Historical Society or State Historical Preservation Officer been contacted? Has he responded, and if so, what was the nature of that response? Will the proposed project result in a significant adverse effect on lands or structures of historic, architectural, archaeological or cultural value?

(7) Will the proposed project lead to a significant long-range increase in energy demands?

(8) Will the proposed project result in significant and long range adverse changes in ambient air quality or noise levels? Short term?

(9) If the proposed project involves the use of in-lake chemical treatment, what long and short term adverse effects can be expected from that treatment? How will the project recipient mitigate these effects?

(10) Does the proposal contain all the information that EPA requires in order to determine whether the project complies with Executive Order 11988 on floodplains? Is the proposed project located in a floodplain? If so, will the project involve construction of structures in the floodplain? What steps will be taken to reduce the possible effects of flood damage to the project?

(11) If the project involves physically modifying the lake shore or its bed or its watershed, by dredging, for example, what steps will be taken to minimize any immediate and long term adverse effects of such activities? When dredging is employed, where will the dredged material be deposited, what can be expected and what measures will the recipient employ to minimize any significant adverse impacts from its deposition?

(12) Does the project proposal contain all information that EPA requires in order to determine whether the project complies with Executive Order 11990 on wetlands? Will the proposed project have a significant adverse effect on fish and wildlife, or on wetlands or any other wildlife habitat, especially those of endangered species? How significant is this impact in relation to the local or regional critical habitat needs? Have actions to mitigate habitat destruction been incorporated into the project? Has the recipient properly consulted with appropriate State and Federal fish, game and wildlife agencies and with the U.S. Fish and Wildlife Service? What were their replies?

(13) Describe any feasible alternatives to the proposed project in terms of environmental impacts, commitment of resources, public interest and costs and why they were not proposed.

(14) Describe other measures not discussed previously that are necessary to mitigate adverse environmental impacts resulting from the implementation of the proposed project.

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40 CFR Parts 51, 52

[FRL-1404-8]

Prevention of Significant Deterioration; Partial Stay of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of regulations.

SUMMARY: By the administrative order which appears below, EPA stays its existing regulations for the prevention of significant air quality deterioration, 40 CFR 51.24 and 52.21 (1978), as to any source or modification which either (1) would not be major under the amendments to those regulations proposed at 44 FR 51924 (September 5, 1979) or (2) would be located in an area designated under Section 107 of the Clean Air Act as nonattainment for each pollutant for which the source or modification would be major under the proposed amendments.

EFFECTIVE DATE: The effective date of the stay is the date of signature of this notice. (January 30, 1980)

FOR FURTHER INFORMATION CONTACT: James Weigold, Standards Implementation Branch (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711-919/541-5292.

SUPPLEMENTARY INFORMATION: In June 1979, the United States Court of Appeals for the District of Columbia Circuit in a preliminary opinion held invalid certain key provisions of the regulations for the prevention of significant air quality deterioration which EPA had promulgated approximately one year earlier ("the 1978 PSD regulations"). See *Alabama Power Company v. Costle*, 13 ERC 1225. Those regulations appear at 40 CFR 51.24 and 52.21 (1978).

In September 1979, EPA proposed comprehensive amendments to the 1978 PSD regulations in response to the preliminary opinion in *Alabama Power*. See 44 FR 51924. Among those amendments are rules that would replace the provisions the court held invalid. Also among them are important provisions that would complement the replacements, for example, certain *de minimis* exemptions (see *id.* at 51937-38).

On December 14, 1979, the Court of Appeals in a final opinion reaffirmed its earlier decisions on the validity of the provisions at issue in *Alabama Power*. See 13 ERC 1993. Hence, when the opinion comes into effect, it will render ineffective key elements of the 1978 PSD regulations.

EPA will be unable to complete the rulemaking it began in September until at least June 1980. The comments EPA has received so far are voluminous and raise important issues that deserve serious consideration. In addition, in response to numerous requests, EPA recently reopened the comment period for comment on the September proposals in light of the final opinion of the court. Furthermore, EPA is reanalyzing the proposed *de minimis* exemptions and completing an economic impact assessment of the proposals. Finally, internal review of drafts of the final amendments will require considerable time.

To avoid the uncertainty and confusion that would occur if the opinion came into effect before EPA completed the rulemaking it began in September, EPA and many of the petitioners in *Alabama Power* have asked the court to keep the opinion from coming into effect until June 2, 1980, on the condition that EPA issue the administrative stay which appears below.

The purpose of the administrative stay is to relieve from the permitting requirements of the 1978 PSD regulations roughly those sources and modifications that would not be subject to the permitting requirements of valid replacement regulations that would comport with the *Alabama Power* opinion. Obviously, it would be unfair and unnecessary to force such sources and modifications to get a PSD permit under the 1978 PSD regulations during this transition period.

EPA has decided to issue the administrative stay before the court acts on the request of the various parties in *Alabama Power*. Many persons are ready to begin construction of sources and modifications that would need a PSD permit under the 1978 PSD regulations, but not under valid replacement regulations. EPA has concluded that to allow the 1978 PSD regulations to interfere any longer with such construction would be both unfair and unnecessary. Hence, it is issuing the administrative stay which appears below.

EPA regards the issuance of the administrative stay as "nationally applicable" "final action" within the meaning of Section 307(b)(1) of the Clean Air Act (the "Act"), 42 U.S.C.

7007(b)(1). EPA does not, however, regard the stay as the "promulgation or revision of regulations" within the meaning of Section 307(d)(1)(I) of the Act, 42 U.S.C. 7007(d)(1)(I). The stay is merely an order providing equitable relief during the period before the completion of the rulemaking that EPA began in September. The procedural requirements of Section 307(d), therefore, do not apply to the issuance of the administrative stay.

In any event, those requirements, as well as the notice and comment requirements of Section 4 of the Administrative Procedure Act (the "APA"), 5 U.S.C. 553, do not apply for other reasons. First, meeting either set of requirements would be "contrary to the public interest" within the meaning of Section 4(b)(B) of the APA, 5 U.S.C. 553(b)(B), since it would unnecessarily delay the construction of those sources and modifications to which the stay applies. Meeting those requirements would also be "unnecessary" within the meaning of that section, since the stay provides relief which is generally consistent with the final opinion of the court in *Alabama Power*. Finally, meeting those requirements would be "impracticable" within the meaning of Section 4(b)(D), since it would defeat the very purpose of the stay: to provide relief as soon as possible and, together with a judicial stay of the effect of the final opinion, free the agency to concentrate on the rulemaking it began in September. See Clean Air Act § 307(d)(1)(N), 42 U.S.C. 7607(d)(1)(N). For the same reasons, EPA finds that it has good cause to make the administrative stay immediately effective. See APA § 4(d), 5 U.S.C. 553(d).

The administrative stay opens a gap in the coverage of the new source review requirements for nonattainment areas that EPA intends to close in the near future through the promulgation of final rules. In general, those nonattainment requirements currently do not apply to a source or modification that, although located in an area designated nonattainment for each pollutant for which it would be major, would not significantly impact those portions of the area where pollution actually exceeds the applicable national ambient air quality standard or standards (NAAQS). See, e.g., 40 CFR Part 51, Appendix S, § II(D), 44 FR 3283 (January 18, 1979). In establishing that "clean pocket" exemption, EPA assumed that PSD permitting requirements would apply to any such source or modification, thereby filling the gap in the coverage of the